



DEPUTIES

JOHN P. KEPPELER II
DONA L. HANAIKE

AQUACULTURE DEVELOPMENT
PROGRAM

AQUATIC RESOURCES
CONSERVATION AND

ENVIRONMENTAL AFFAIRS
CONSERVATION AND
RESOURCES ENFORCEMENT

CONVEYANCES

FORESTRY AND WILDLIFE
HISTORIC PRESERVATION

DIVISION
LAND MANAGEMENT
STATE PARKS

WATER AND LAND DEVELOPMENT

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
33 SOUTH KING STREET, 6TH FLOOR
HONOLULU, HAWAII 96813

AGENDA

MOLOKAI ISLAND BURIAL COUNCIL MEETING

Date: Tuesday, September 21, 1993
Time: 1:00 PM
Place: Queen Lili'uokalani Children's Center-
Lili'uokalani Trust
Molokai Office
Kalamaula

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DEPUTY GOVERNOR'S
OFFICE

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Information: including Mapulehu, Kaluaakoi and Waialua
- IV. ANNOUNCEMENTS
- V. ADJOURNMENT



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MINUTES

MOLOKAI ISLAND BURIAL COUNCIL MEETING

Date: Tuesday, September 21, 1993
Time: 1:00 PM
Place: Queen Lili'uokalani Children's Center
Molokai Office
Kalamaula

ATTENDANCE:

Council: William Akutagawa Jr.
Pearl Hodgins
Colette Machado, Chair
Noelani Meyer Keliikipi
Eliza Reyes

Staff: Edward Halealoha Ayau, Program Coordinator
Barbara Kameda, facilitator

Guests: Luana E. Kamakua (Hui Malama I Nā Kūpuna O Hawai'i
Nei O Molokai)
Alapa'i and Mililani Hanapi
Lawrence K. Aki
Judy L. & Cappy Caparida (Naki 'Ohana)
Walter Ritte

ABSENT: Henry Nalaelua
Henry Ayau Jr.
Matthew Adolpho Jr.
Lani Kapuni

I. OPENING REMARKS:

Chairperson Colette Machado called the meeting to order at 1:15 p.m. Eliza Kauila Reyes offered a *pule wehe* (opening prayer).

II. APPROVAL OF FEBRUARY 2, 1993 MEETING MINUTES:

The Molokai Island Burial Council meeting minutes of February 2, 1993 were amended to reflect the following:

1. Section V, Item 2, Page 5, Change **Kauai Loa** to **Waialua**.

It was moved and unanimously approved that the minutes of February 2, 1993 be accepted as amended.
(Hodgins/Akutagawa)

III. BUSINESS:

A. Moanui

Information: Inadvertent discovery of Hawaiian burials at Moanui.

Eddie Ayau recapped on the Moanui Burial site that Annie Griffin reported in memo dated December 2, 1992 she observed remains eroding out of the shoreline at Kahinapohaku. At the January, meeting the council felt the primary focus at that time should be Mapulehu and reintering all those remains. Following our site visit on February 8, 1993, a letter was written to the landowner at Pu'u 'O Hōkū Ranch, notifying them that this site was eroding and that this was under the jurisdiction of SHPD. The department wanted to discuss appropriate measures to protect the burial site. Ayau said in March, an agreement was worked out with Pu'u 'O Hōkū Ranch to gain access to the property. Ayau said the agreement authorized the department to access their property for purposes of protecting the burial site. Ayau reported that in June, when the Mapulehu reburial took place, he stopped by to look at Kahinapohaku and it remained unchanged. The remains that had been exposed before were covered up and there were no additional erosion. On September 1, 1993, Machado notified Ayau as a result of hurricane Fernanda that the remains at Kahinapohaku had eroded out. On September 2, 1993, Maui Island archaeologist Theresa Donham, Ayau and Machado put together a crew to recover what was there. Ayau said at the time, the department wasn't aware that the discovery had been reported almost 2 weeks earlier to the police. The police notified DOCARE on Molokai but no action was taken because SHPD was

never notified and that created a lot of problems. The department was not able to respond in the required 3 day time period and make a decision on proper treatment.

Ayau said as a result of this, a meeting took place this morning with the Police Department, DOCARE staff, and Martin Kahae of Department of Transportation. Ayau said the purpose was to educate them on what the process is when burials are inadvertently discovered and that they need to call our Honolulu office, otherwise nothing is going to get done. Ayau expressed hope that this will help prevent a lag in notifying the department.

Machado reported that she received a call from the Department on September 1, 1993 and within an hour was at the site and noticed that 5 feet of the sand dune had collapsed. She said a skull was held together by the sand and a plastic bag was attached to it with other small pieces. She reported that they saw a lot of scattered ribs, long bones and a full body with the vertebrae in the sand. Machado said she requested that the archaeologist come to Molokai because she knew how sensitive that area was. Machado explained how the recovery work was done by volunteers and the number of hours it took. Machado said Donham was able to map the area and identified 6 burials, removed 2 full bodies and fragments. The iwi were sorted by burial site and Machado has it stored at her house in boxes. She said the council has to come up with a plan to secure that entire area because she was certain there are more. Machado said since the newspaper articles ran, it brought a lot of attention to the area.

Ayau said the department is trying to clarify that there is a law that gives the police department the responsibility that they have to actively investigate if somebody says they saw human remains. First of all, they have to determine that it is not their case and if it is someone who died more than 50 years ago, then they have to notify SHPD so that proper action can be taken. If there's a violation of the law, the police officer's report should state what the status of the discovery was, because too often, by the time the department finds out, a lot has changed and it undermines the investigation.

Walter Ritte expressed his concern that Peabody took pictures and used it in his articles. Ayau said on one hand there is a constitutional right that the press can do almost whatever they please but on the other hand there is the balance of this statute that talks about cultural sensitivity. One of the things the department asked the police to do today was to make sure they [the press] had the authority of the landowner to be there because the police

cannot prevent them from taking pictures.

Ayau said he told Peabody that the department cannot tell him what to publish, but Ayau told him that the burial councils and the other members of the community are going to get very upset. Peabody told Ayau he was going to emphasize cultural sensitivity in this article. Ayau advised another more effective way of dealing with this is that law prevent people from injuring or excavating burial sites or "taking". Ayau said the department wants the Attorney General's office to assert in the rules that "taking" from a burial site includes not only physically taking but taking pictures because that's another form of "taking". The department hopes the final draft rules will include that it's illegal to take photographs of burial sites without prior authorization.

Ayau said another issue that the council should take formal action on is the issue of confidentiality of information. The burials law also says that when the state has records that relate to burial sites and the council passes a motion that says that these records are sensitive, the department can exempt it from public disclosure. Otherwise, the state is responsible for providing its records be made public and that this is known as the Sunshine Law. Ayau said Peabody requested the archaeological report and the department rejected his request because the department hadn't raised the issue with the council yet.

There was a discussion on a letter be written to Peabody by the leaders of the community to express how they felt and should be signed by all. Ayau asked that the department receives a copy of it.

Motion: Move to begin the process of building an enclosure to include a fenced off area, to build a stabilizing wall (whether temporary or permanent), to have the burials remain in-situ and for the prompt reburial of the recovered remains, that a plaque be put up at the site identifying it as a culturally significant area and have the department enter into a permanent agreement with the landowners in encumbering the site or holding it for future use by the state to preserve and remain in place as such.
(Akutagawa/Reyes)

Vote: all in favor

Motion: to prohibit the release of any information on the Kahina Pohaku Burial site due to the cultural sensitivity of the area. (Akutagawa/Hodgins)

Vote: All in favor

Machado read a draft letter addressed to George Peabody, editor of Molokai Advertiser News. The letter addresses "...how outrage and callous and insensitive his actions in printing the na iwi kupuna exposed at Kahina Pohaku and then to print the pictures in the advertiser news. We also understand you submitted a video tape of the burial site to KGMB news. Two photos have been published in your newspaper despite your being sensitized to the issue by Eddie Ayau who stated that printing pictures of Hawaiian bones in the na'au of many concerned native Hawaiian amounts to desecration of the sanctuary of the ancestors. Through your photos and films, you've exposed which was not supposed to be seen for our ancestors taught us that these matters are *huna*. As a result the *kaumaha*, heaviness and the *hilahila*, shame is yours to bear, ironically your articles which accompany the pictures cleverly side steps your own cultural transgressions and attempt to place blame on this council, even more ironic is that you dare raise the issue of cultural sensitivity, these actions are most offensive and reflect your true nature, ano a. In order to conduct more responsible journalism, we request that you get the facts before judging our actions in the press. This council was aware of these burial sites and made good fate attempts to protect it in-place, however we knew that we could not stop the ocean from eroding the burials. More importantly, we did not want to intentionally move the ancestral remains unless it was absolutely imperative that we do so. These matters are much more difficult and serious than non-Hawaiians like yourself could imagine. If we make a mistake in the care of our ancestors, the hurt will come to us therefore, it is our responsibility we must take serious. But there are implications for our families please show respect, after all you are in Hawaii ancestral homeland of living Hawaiians." Machado suggested for unification all the council members sign it.

There was a discussion on who the letter should be addressed to. It was decided that both Peabody and his wife be made responsible for what he is publishing. It was also concluded that all families and friends should be encouraged to write letters expressing their views to the Dispatch.

Walter Ritte suggested sending a letter to someone who is responsible for cleaning the culvert.

Motion: that contact be made to the appropriate state agency for maintaining and cleaning out the culvert to make the site clear. (Akutagawa/Keliikipi)

Vote: all in favor

B. Case Updates

Information: including Kalua Ko'i, Waialua and Mapulehu.

1. Kalua Ko'i

Ayau updated the council that in March, 1993, a letter was written to Hide Takahashi and asked Kukui Molokai to obtain the cultural materials of *tapa* and *lauhala*. Ayau reported that the reinterment took place on June 2 and went very well. A letter was sent to Kukui Molokai to thank them for their assistance in setting this area aside.

2. Waialua, Eckert Property

Ayau said all of the graves were identified in Waialua. An in-place burial agreement is in place with the Eckerts. Ayau explained that it effectively sets aside that area with a 20 or 50 ft buffer zone around the graves and provides access to David Kaupu's family to visit the graves. Ayau said if the Eckert's sell the property, the agreement would be binding on whoever purchases it.

3. Mapulehu

Ayau said the department wrote to the Aki family because they claimed lineal descent and asked them to give us more information. The Department wrote to Ellen Osborne to inform her the reinterment was going to take place on June 3 and she had to make preparations of the reinterment site. We also made her responsible for obtaining the cultural materials, the *tapa* and the *lauhala* baskets. Ayau said nothing was done. The department's next step was to execute the burial agreement with the landowners, HSPA and they agreed to set aside the 1/2 acre burial site. Ayau said the department received an anonymous call that some remains had been dumped into a well on the property. The investigation initially occurred when the informant notified the department that they found some human skulls. The informant said it was placed in a plastic bucket and left near the site but when he returned to look for it, he never found those remains. The department was informed that the remains may have been dumped in the well on that property. So, SHPD requested permission to go back into the property to investigate it.

The Attorney General's office filed suit against Osborne for violations of the burials law and is requesting fines of up to \$300,000 because disturbing the burial site carries a \$10,000 fine and that was based on 30 burials which is a

conservative estimate. The status right now is she was given an extension to file her answer by end of next week. The department's view is as a landowner, you do any kind of excavation and come across a burial site, it's not illegal that the bulldozer hits those remains but at the point that you realize that those are human remains and you continue, that's when you cross the line. In this situation, from the testimony the department was able to gather and what was uncovered, the department had every reason to believe that this is an intentional violation.

Ayau explained that the landowner is staying out of it and as far as they're concerned, their responsibility was to set the burial site aside. As far as the lease with Osborne and whatever activities she did on the property, she's solely responsible for. Once the remains are put back, they become a known burial site, and if the landowner wants to do anything that's going to cause disturbance they have to come back to the council.

Machado informed the council that Ellen Osborne applied for a request to use the well to allow her to reserve water for 4-1/2 acres of irrigation. She was not sure if the permit has been granted. Machado said at the water hearing, Osborne claimed that all the burials were resolved. Machado said she testified to say that Osborne was being prosecuted because of the burials. Ayau said he would check into the matter.

4. Ayau reviewed the Waihe'e contested case that took place on Maui in June, 1993. He explained that it had to do with whether the landowner who was subdividing his property would be allowed to move a burial for economic reasons, claiming they couldn't sell that property because the burial was there. The economic concern is not what's stated in the statute instead, the law talks about cultural sensitivity. After 2-1/2 days of testimony, the department was able to prove all the elements that the law requires for preservation in-place.

5. Keonelele

Walter Ritte expressed concern about the sand mining activity by Molokai Ranch on the sand dunes at Keonelele because the dunes are culturally sensitive and contains a number of burials. He felt that somehow SHPD should be involved.

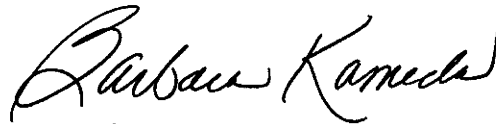
Ayau explained that when the councils were first formed, a letter was sent to the mayor and the county planning

department and asked them to see all sand mining permits because of the concern of the burials. The department received a response from the mayor assuring that SHPD would see all the permits. The problem is in a lot of the cases, whoever is doing the activities is not going in for permits. The department finds out from someone calling in to tell us about it. Ayau said he would contact Jim Mozley of Molokai Ranch.

VII. ADJOURNMENT:

The meeting was adjourned at 3:30 p.m.

Respectfully submitted:

A handwritten signature in cursive script, reading "Barbara Kameda".

Barbara Kameda